

NOTE: Appearing first is the Full Board summary which is the last meeting of the day. The committees will follow in the order of which time they were conducted. The Dealer Board staff felt it would benefit our readers to have the last meeting of the day appear first on the website.

~ **FINAL** ~

Meeting Summary
Motor Vehicle Dealer Board
Monday, March 10, 2003

Vice-Chairman Steve Farmer called the Dealer Board meeting to order at 10:22 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 13 members present. Present were members Vice-Chairman Larry Matthews, Tom Barton, Bobby Joe Dotson, Rick Hunt, Pete Iaricci, Clyde King, Al Lacy, Joel Lyles, Mike Martin, Karen Radley, Leo Trenor (Absent: Ab Quillian, Vince Sheehy, Carlton Courter, Max Pearson, Bruce Farrell, Ted Robertson). Bruce Gould, Peggy Bailey and Katherine Idrissi represented the Dealer Board. Gail Morykon, Bill Jackson and Special Agent Westfall were present from the DMV. There was no representation from the Attorney General's Office. Alice Weedon acted as Recording Secretary.

The January 13, 2003 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

STATUTORY COMMITTEE REPORTS:

Dealer Practices Committee:

Chairman Steve Farmer summarized discussions held and actions that were taken during the Committee Meeting.

Review and Action: Formal Hearing:

- **Payam Badrpay and Universal Auto Leasing, Inc.** Chairman Steve Farmer summarized for the Board the discussion held in the Committee meeting regarding Payam Badrpay and Universal Auto Leasing, Inc. Based on that discussion and the recommendation in the case, Steve Farmer made the following motion: Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the executive director revoked all licenses issued to Mr. Payam Badrpay and Universal Auto Leasing, Inc. for violations related to record keeping and failing to comply with a written warning and Mr. Badrpay appealed the revocation and requested a formal hearing and based on due consideration, the Board believes that all licenses and certificates issued to Mr. Payam Badrpay and Universal Auto Leasing, Inc, should be revoked. The Board hereby revokes all licenses and certificates issued to Mr. Payam Badrpay and Universal Auto Leasing, Inc, for violations of Va. Code §46.2-1575(2)

Mike Martin seconded. The motion passed unanimously.

- **Variance Request (Dealer Hours and Storage of Dealer Records).** Bruce Gould indicated that there were no requests for variances in dealer hours; however, there were three (3) requests for storage of dealer records off site. All three were granted.

Licensing Committee:

Vice-Chairman Pete Iaricci summarized discussions held and actions that were taken during the Committee Meeting.

- **Salespersons To Be Employed Resolution.** Pete Iaricci made the following motion: The Motor Vehicle Dealer Board adopted a resolution at its January 2003 meeting that all salespersons must be employed by the dealer as a wage employee and not as an independent contractor and that failure to comply could result in a civil penalty or suspension or revocation of the dealer’s license and the Motor Vehicle Dealer Board directed its staff to develop a system to ensure that at the time of the issuance of an original license and at the time of renewal of an existing license, that all licensed salespersons for dealers be employed by the dealer and the Board believes that all dealers should be notified of the requirement that all salespersons must be employed by the dealership and may not be independent contractors. Any licensed dealer not in compliance with the Board’s requirement that licensed salespersons must be employed by the dealer and may not be an independent contractor, shall be given a written warning prior to imposing any sanctions and that the executive director is hereby authorized to impose a civil penalty \$250 on any dealer who is not in compliance with the January 2003 Board resolution and the dealer has received a written warning of previous noncompliance.

Clyde King seconded. The motion passed unanimously.

Advertising Committee:

Full Board Vice-Chairman Larry Matthews summarized discussions that were held during the Committee Meeting. He indicated that there was some discussion referencing “Consumer CashBack Rewards” but no action was taken at this time.

Transaction Recovery Fund Committee:

Chairman Joel Lyles summarized discussions held and actions that were taken during the Committee Meeting.

- Chairman Lyles summarized for the Board the discussion held in the Committee meeting regarding Rachel S. Sprouse and Bridgewater Auto Sales, Inc. and reported that the Committee voted to accept the hearing officer’s recommendation. Discussion followed and based on that discussion, Joel Lyles made the following motion: Pursuant to Section 46.2-1527.1 et seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund (“Fund”), the Board has reviewed and considered claims submitted for payment from the Fund, and based on due consideration and recommendation of the agency representative, the Board believes the following claim should be payable from the Fund. The Board hereby approves and reaffirms the payment of the following claim and amount:

CLAIMANT:	JUDGMENT AMOUNT	AMOUNT OF CLAIM:
Dana Martin	\$32,746.74	\$20,000.00

Clyde King seconded. The motion passed unanimously.

- **Finance Report.** Larry Harrison reported on the Budget and Bi-Monthly Status Report on Agency Revenue Collections and Expenditures for Fiscal-Year 2003 (As of February 2003).

OLD BUSINESS

- **Update: General Assembly.** Bruce Gould reported on HB-1521, relating to vehicles with salvage history. Beginning July 1, 2003, all vehicles purchased by insurance companies and has 75% and less damage to the vehicle, will be branded "repaired" on the title. Don Hall updated the committee on the CVR (on-line dealer) bill. Effect July 1, 2003, this bill allows a dealer to recover the actual cost of electronic transmission, on the buyer's order, the specific amount of the vendor fee from the customer. Dave Boling indicated that the down side of this bill is for those dealers who **are not** able to do electronic transactions. After December 31st 2003 and after the 10th transaction, the dealers who bring the work to DMV will pay an additional \$15.00 per transaction to DMV and cannot transfer this cost to the customer.

NEW BUSINESS

- **Combining Meetings with Full Board and Legislation Suggestions.** Leo Trenor had two suggestions for the next meeting: 1) Hold a Committee meeting first, then go into the Full Board meeting to vote on the issues, then go the next Committee, rather than waiting to the end of all committees for Full Board. 2) Have all the Committee members bring their legislation suggestions to the next meeting for next January. Steve Farmer indicated that the meetings issue will be discussed with the Commissioner and the legislation issue can be put on the agenda for the next meeting.

Executive Director's Report. Bruce Gould reported that staff is on track with the implementation plan for the Salesperson Resolution and the passed Legislation. The computer system and forms are being re-tooled to accommodate the Transaction Recovery Fund legislation. He also reported that the association he belongs to with his peers have agreed to hold their next workshop in Virginia Beach, Virginia and extended an invitation to the members. The meeting will be held September 21 through 24, 2003.

The next meeting will be scheduled for March 10, 2003.

- **Personnel Issues.** Steve Farmer made the following formal motion and a vote taken in order to go into Executive Session: Whereas, pursuant to Section 2.2-3711 of the Code of Virginia, the Motor Vehicle Dealer Board hereby moves to conduct a closed meeting pursuant to Section 2.2-3711A(4). *Whereas, the purpose of the closed meeting is to discuss a personnel issue. Now therefore, be it resolved that the Motor Vehicle Dealer Board conduct a closed meeting for the purpose set forth herein.*

Clyde King seconded. The motion passed unanimously.

Steve Farmer made the following formal motion to come out of Executive Session. "To the best of our knowledge (i) only public business matters lawfully exempted from the open meeting requirements under this Chapter, and (ii) only such business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting".

Larry Matthews seconded.

Tom Barton	Yes	Clyde King	Yes	Larry Matthews	Yes
Bobby Joe Dotson	Yes	Al Lacy	Yes	Karen Radley	Yes
Steve Farmer	Yes	Joel Lyles	Yes	Chris Schroeder	Yes
Rick Hunt	Yes	Mike Martin	Yes	Leo Trenor	Yes
Pete Iaricci	Yes				

The motion passed unanimously.

There being no further business to come before the Motor Vehicle Dealer Board, Vice-Chairman Farmer adjourned the meeting at 12:33 p.m.

Meeting Summary

Dealer Practices Committee

Monday, March 10, 2003

Chairman Steve Farmer called the Dealer Practices Committee meeting to order at 8:43 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were members: Steve Farmer, Clyde King, Bobby Joe Dotson, Mike Martin, Pete Iaricci, Larry Matthews and Chris Schroeder. (Absent: Bruce Farrell and Vince Sheehy) Other members present: Leo Trenor, Joel Lyles, Tom Barton, Karen Radley, Al Lacy and Rick Hunt. Executive Director Bruce Gould, Peggy Bailey, and Katherine Idrissi represented the Dealer Board. Gail Morykon, Bill Jackson and Special Agent Westfall were present from DMV. There was no representation from the Attorney General's Office.

The January 13, 2003 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update January Actions:** Peggy Bailey updated the Committee on the following issue that was discussed at the January meeting: Mr. Sebghatuallah Nassiri and Export Car Connection, Inc was found to be in violation of VA Code Section 46.2-1529/1548 and 1559, all relating to record keeping requirements. The Board assessed a civil penalty totaling \$1,500. Mr. Nassiri was notified of the Board's decision in a letter dated January 23rd and was given until February 24th to either pay the civil penalty or file an appeal. Mr. Nassiri paid the civil penalty on February 20th.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Formal Hearing:

- **Payam Badrpay and Universal Auto Leasing, Inc.** A formal hearing was conducted on January 8, 2003 referencing Payam Badrpay and Universal Auto Leasing for the alleged violations of failing to maintain required dealership records, including records of sales, dealer, temporary and transport license plates, fee notices and a sales staff list at its licensed location (VA Code Section 46.2-1529), failing to maintain odometer disclosure statements for a period of five years in a manner that permits systematic retrieval (VA Code Section 46.2-1532), failing to, no later than the expiration of the first temporary certificate, deliver to the DMV an application for title, copy of the buyer's order, all required fees and a written statement of facts describing the dealer's efforts to secure the certificate of origin to the vehicle (VA Code Section 46.2-1542[C]) and failing to keep a written record of dealer license plates and have them available for inspection (VA Code Section 46.2-1548). Based on the testimony and evidence surrounding the case, the hearing officer found Payam Badrpay and Universal Auto Leasing, Inc. in violation of VA Code Sections 46.2-1529/1530/1532/1542/1548/1550.2 and 1559. Therefore, the hearing officer recommended assessing a civil penalty of \$1,000 for four separate violations of Code Sections 1529/1530/1532/1542 and 1548 totaling \$4,000; \$500 civil penalty for two separate violations of 1542/1550.2 and 1559 totaling \$1,000 and a \$250 civil penalty for failure to post the salesman list and a \$250 civil penalty for failure to post the processing fee, totaling \$500. Civil penalties totaling \$5,500.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Mike Martin to reject the hearing officer's recommendation and to revoke all licenses issued to Mr. Badrpay. The hearing officer had concluded that the letters written to Mr. Badrpay did not constitute a written warning since the phrase "written warning" was not included in the letter. The Committee disagreed and believed that the letters do constitute a written warning. Larry Matthews seconded. The motion passed unanimously.

- **Report on Variance Requests (Dealer Hours and Storage of Dealer Records).** Bruce Gould reported that there were no requests for variances in dealer hours; however, there were three (3) requests for storage of dealer records off site. All three were granted, due to good standings with the Dealer Board.
- **Odometer Disclosure/Power of Attorney.** Leo Trenor wanted to make the members aware of a news article referencing a court ruling concerning odometer tampering and the use of a supplemental form to reassign a title. It should not be used. No further discussion or action was taken.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for May 12, 2003.

The meeting adjourned at 9:02 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, March 10, 2003

Vice-Chairman Pete Iaricci called the Dealer Licensing Committee meeting to order at 9:08 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were members Clyde King, Chris Schroeder, Steve Farmer, Bobby Joe Dotson, Mike Martin, and Larry Matthews. (Absent: Bruce Farrell and Vince Sheehy) Other members present: Leo Trenor, Rick Hunt, Joel Lyles, Tom Barton, Karen Radley and Al Lacy. Executive Director Bruce Gould, Peggy Bailey, Katherine Idrissi and Vic Hernandez represented the Dealer Board. Gail Morykon, Bill Jackson and Special Agent Westfall represented DMV. There was no representation from the Attorney General's Office.

PUBLIC COMMENT:

The January 13, 2003 meeting summary was approved.

OLD BUSINESS

- **Update: January Actions.** Peggy Bailey updated the Committee on the following issues that were discussed at the January meeting: The Committee considered the hearing officers' reports on the following sales consultants and resolutions were passed: (1) Mr. Floyd B. Brantley, III was convicted of a felony in between renewal periods. After a formal hearing was conducted, the Board reviewed and considered the facts, and evidence and passed a resolution to suspend Mr. Brantley's motor vehicle salesperson's license for a period of 120 days. In a letter dated January 23rd Mr. Brantley was notified of the Board's decision. Mr. Brantley surrendered his license on February 19, 2003. (2) Mr. Jeffrey M. Brown was convicted of a felony in between renewal periods. After a formal hearing was conducted, the Board reviewed and considered the facts, and evidence and passed a resolution to allow Mr. Brown to retain his motor vehicle salesperson's license. In a letter dated January 23rd Mr. Brown was notified of the Board's decision. (3) Mr. Michael D. Hockett was convicted of a felony in between renewal periods. After a formal hearing was conducted, the Board reviewed and considered the facts, and evidence and passed a resolution to suspend Mr. Hockett's motor vehicle salesperson's license for a period of 45 days. In a letter dated January 23rd Mr. Hockett was notified of the Board's decision. Mr. Hockett surrendered his license to the Board on February 18, 2003. (4) Mr. Alvin W. Walden was convicted of a felony in between renewal periods. After a formal hearing was conducted, the Board reviewed and considered the facts, and evidence and passed a resolution to suspend Mr. Walden's motor vehicle salesperson's license for a period of 120 days. In a letter dated January 27th Mr. Walden was notified for the Board's decision. Mr. Walden surrendered his license on February 26, 2002. (5) Mr. Robert A. Hudson, Jr. was denied a motor vehicle salesperson's license for failing to forward sales and use tax to the Department of Motor Vehicles. After a formal hearing was conducted, the Board reviewed and considered the facts, and evidence and passed a resolution to issue a motor vehicle salesperson's license to Mr. Hudson. In a letter dated January 27th Mr. Hudson was notified of the Board's decision and given the license. (6) Mr. Lewis G. Bagwell, Jr. was convicted of a felony in between renewal periods. After a formal hearing was conducted, the Board reviewed and considered the facts, and evidence and passed a resolution to suspend his motor vehicle salesperson's license for a period of 25 days, if he could not provide documentary evidence that all criminal fines and court costs were paid, and if in the future he violated any provisions of the Dealer Laws. In a letter dated January 23rd Mr. Bagwell was notified of the Board's decision. The Board received a copy of the payment in full receipt from Mr. Bagwell on February 24, 2002.

- **Update Salesperson Resolution (W-2 vs. "1099")**. Bruce Gould reported that the special task force came up with a number of recommendations, one of which was to begin a process by which staff will inform the dealer community that in order to be licensed as a salesperson, the individual cannot be an individual contractor, they have to be an employee of the dealership. The information has been sent via e-mail and has been placed in Dealer Talk. In the next phase of notification to the dealer community is a letter will be sent March 17 to all dealers explaining that all salespeople must be employees and cannot be independent contractors. After the educational process, if the dealer is not in compliance, a warning letter will be sent, if the dealer still does not comply, then a civil penalty will be assessed. However, a resolution is needed to authorize the Executive Director to assess civil penalties.

Motion was made by Mike Martin to support a resolution that will allow the Executive Director to assess an initial civil penalty of \$250, when dealers do not comply with the Salesperson Resolution after a written warning has been issued. Larry Matthews seconded. The motion passed unanimously.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for May 12, 2003.

The meeting adjourned at 9:25 a.m.

Meeting Summary
Advertising Committee
Monday, March 10, 2003

Full Board Vice-Chairman Larry Matthews called the Advertising Committee meeting to order at 9:33 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were members Karen Radley, Chris Schroeder, Rick Hunt, Joel Lyles, Tom Barton, Leo Trenor. (Absent: Vince Sheehy, Ted Robertson and Max Pearson). Other Board members present: Steve Farmer, Clyde King, Mike Martin, Pete Iaricci, Al Lacy and Bobby Joe Dotson. Executive Director Bruce Gould, Peggy Bailey, Katherine Idrissi and Vic Hernandez represented the Dealer Board. Gail Morykon, Bill Jackson and Special Agent Westfall represented DMV. There was no representation from the Attorney General's Office.

The January 13, 2003 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

NEW BUSINESS FROM THE FLOOR

- **Review of Advertisement: "Consumer CashBack Rewards"**. Bruce Gould indicated that he received some information from Art Casey and his organization. The initial thought of staff was that this type of advertising was a form of a dealer rebate and that it may not be allowed. Therefore, he is bringing it before the committee for review.

At this time, Mr. Bill Lehner and Mr. Art Casey spoke on behalf of the program and requested that the committee approve this promotion that Mr. Casey would like to use. Mr. Lehner reassured the committee that it was not a form of a dealer rebate and Mr. Casey will comply with the law when he implements this program.

Consensus of the committee was to not to take any action. If necessary, the Committee will review the advertising campaign when it is implemented.

The next meeting will be May 12, 2003.

The meeting adjourned at 1016 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, March 10, 2003

Chairman Joel Lyles called the Transaction Recovery Fund Committee meeting to order at 10:22 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were members Bobby Joe Dotson, Leo Trenor, Mike Martin, Karen Radley, Rick Hunt, Al Lacy and Chris Schroeder. (Absent: Bruce Farrell). Other Board members present: Tom Barton, Larry Matthews, Steve Farmer, Clyde King, Pete Iaricci. Executive Director Bruce Gould, Peggy Bailey and Katherine Idrissi represented the Dealer Board. Gail Morykon, Bill Jackson and Special Agent Westfall represented DMV. There was no representation from the Attorney General's Office.

The January 13, 2003 summary was approved.

PUBLIC COMMENT:

There was no public comment.

OLD BUSINESS

- **Update: January Actions.** Joel Lyles indicated that at the January meeting, the following claim was denied for payment: Dana Martin v. Hudson Chevrolet Corp. In this case, the fact of the judgment was for a "contract" for an "extended warranty" in the amount of \$1,559.31. The vehicle was purchased in April of 1998 and the extended warranty was not executed until December of 2000. The Board determined that since the Extended Warranty was purchased twenty-eight (28) months after Ms. Martin purchased the vehicle, that it was not "in connection with the sale" of a motor vehicle and denied the claim pursuant to VA Code Section 46.2-1527.3

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

- **Review and Action: Informal Fact-Finding Conference Results:**

Rachel S. Sprouse & Evelyn Smiley and Bridgewater Auto Sales, Inc. Rachel S. Sprouse purchased a 1995 Pontiac Grand Am on August 9, 1999 for \$8,700.00. In addition, Ms Sprouse and Mrs. Smiley obtained a Wynn's extended service contract for \$500.00 and financed the total due of \$9,200.00 with one extension of credit from Bridgewater Auto. Before signing the contract, Ms. Sprouse and Mrs. Smiley asked if the vehicle had ever been in an accident, Bridgewater indicated that the vehicle had never been involved in an accident. After making payments in excess of \$6,250.00, Ms. Sprouse and Mrs. Smiley discovered that the vehicle had been in a major accident and in order to make the vehicle safe for driving, they had a minimum cost of \$3,807.40 to have the vehicle repaired. On July 26, 2001, the two ladies informed Bridgewater that Mrs. Smiley was canceling the credit agreement secured by her personnel residence and on July 27, 2001, they demanded that Bridgewater cover the costs of repairing the vehicle. Bridgewater did not take the appropriate steps to cancel the Deed of Trust and the credit transaction, nor did they pay for the repairs that were made to the vehicle. On September 19, 2002, the ladies attorney, Mr. Thomas Domonoske, submitted to the Board staff a Second Amended Complaint and Demand for Jury Trial with all the appropriate copies of the paperwork as prior notification.

On October 24, 2002, Mr. Domonoske submitted a letter to the Board indicating that Bridgewater was found liable for constructive fraud and for willfully violating the Virginia Consumer Protection Act. On November 5, 2002, Mr. Domonoske submitted to the Board the Final Judgment Order. The court determined \$12,235.59 for damages to the consumer on a partial judgment dated for October 15, 2002 and ordered \$20,511.35 on the Final Judgment dated October 24, 2002 (\$18,990.00 for attorney's fees and \$1,521.35 costs). Thus making the total amount of Judgment \$32,746.74. After carefully reviewing the facts, staff recommended that the Recovery Fund committee and the Board approve Ms. Sprouse's and Mrs. Smiley's claim in the amount of \$20,000.00, the maximum amount payable from the Fund.

An informal fact-finding conference was conducted on February 11, 2003 and based on the testimony and evidence in the case, the agency representative conducting the informal fact-finding conference recommended that the Recovery Fund Committee and Board approve payment of the \$20,000.00.

After some discussion and review of the information provided to the Committee in their notebooks, a motion was made by Joel Lyles to accept the hearing officer's recommendation. Mike Martin seconded. The motion passed unanimously.

NEW BUSINESS FROM THE FLOOR

- **Update: Budget Cuts and Transaction Recovery Fund Legislation.** A question was asked about the Attorney General's Opinion that was requested back in October of 2002. Bruce Gould indicated that he has not heard from the Attorney General's office but would be glad to write a letter to the Attorney General requesting a response. Consensus of the committee agreed and hopefully Bruce will have an answer for the May Committee meeting.

Bruce indicated that HB-2604 has passed both houses and is now awaiting the Governor's signature and is confident that the Governor will sign the bill. HB-2604 will provide Dealers with 2 bonding options or to remain with the Transaction Recovery Fund. Dealers can obtain their own \$100,000 bond or they may be covered by a \$1 million umbrella bond if they belong to a qualifying organization that carries such a bond. All dealers, in their first 3 years of operation, will be required to follow the current process of a \$25,000 bond and paying \$250 into the Fund. Nearly all of the money in the fund will be transferred to the General Fund. About \$200,000 to \$300,000 will remain in the Fund.

No other new business from the floor.

The next meeting was scheduled for May 12, 2003.

The meeting adjourned at 11:17 a.m.